

1 SENATE BILL 128

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

3 INTRODUCED BY

4 Steve Komadina

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10 AN ACT

11 RELATING TO CHILDREN; PROVIDING TRANSITIONAL SUPPORT FOR FOSTER
12 YOUTH IN THE STATE'S CUSTODY; AMENDING AND ENACTING SECTIONS OF
13 THE ABUSE AND NEGLECT ACT; AMENDING THE MOTOR VEHICLE CODE TO
14 ALLOW FOSTER YOUTH TO OBTAIN DRIVER'S LICENSES; MAKING
15 APPROPRIATIONS.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 Section 1. A new section of the Abuse and Neglect Act is
19 enacted to read:

20 "[NEW MATERIAL] TRANSITION SERVICES.--

21 A. Prior to a child's reaching seventeen years of
22 age, the department shall meet with the child, the child's
23 attorney and other individuals of the child's choosing to
24 develop a transition living plan. The department shall assist
25 the child in identifying and planning to meet the child's needs

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1 for services and support after the child leaves state custody,
2 in the areas of:

- 3 (1) housing;
- 4 (2) education;
- 5 (3) employment;
- 6 (4) health; and
- 7 (5) mental health.

8 B. The department shall provide the proposed
9 transition living plan, based upon the child's stated
10 preferences, to the child and the child's attorney within ten
11 days of the meeting to develop the plan. If the child, after
12 opportunity for consultation with the child's attorney,
13 signifies agreement with the plan in writing, the department
14 shall file the child's plan with the court as part of the
15 child's proposed transition living plan.

16 C. In the event the child wishes to contest the
17 plan proposed by the department, the child may request a
18 transition living plan review hearing or raise the child's
19 concern with the plan at the next regularly scheduled judicial
20 review hearing, after which the court may order the transition
21 living plan proposed by the department or make additional
22 modifications of the transition living plan that the court
23 determines appropriate to provide for the support and
24 maintenance needed by the child.

25 D. The court shall review the department's

1 implementation of the transition living plan approved by the
2 court, whether by agreement of the parties or after a contested
3 hearing, at every subsequent judicial review hearing. The
4 child may also request a special hearing for enforcement or
5 modification of the plan.

6 E. At least one hundred twenty days before the
7 child reaches eighteen years of age, the department shall
8 convene a planning meeting with the child, the child's attorney
9 and other persons of the child's choosing to review the
10 implementation of the transition living plan."

11 Section 2. A new section of the Abuse and Neglect Act is
12 enacted to read:

13 "[NEW MATERIAL] DISCHARGE HEARING.--

14 A. The court shall hold a discharge hearing ninety
15 days before the child reaches eighteen years of age. At the
16 discharge hearing, the court shall determine whether the
17 department has:

18 (1) ensured that the child is present in court
19 for a review of the implementation of the transition living
20 plan, unless the department documents that the child chose not
21 to appear and documents its efforts to locate the child and to
22 provide the child transportation to the hearing; and

23 (2) verified in writing that the following
24 information, documents and services have been provided to the
25 child:

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1 (a) written information concerning the
2 child's case, including the child's family history, the child's
3 placement history, the whereabouts of any sibling under the
4 jurisdiction of the juvenile court, unless the court determines
5 that the sibling contact would jeopardize the safety or welfare
6 of the sibling, instructions on how to access the documents the
7 child is entitled to inspect and the date on which the
8 jurisdiction of the court would be terminated;

9 (b) if applicable, the child's social
10 security card, certified birth certificate, health and
11 education summary, state-issued identification card, death
12 certificate of the parent and proof of citizenship or
13 residence;

14 (c) assistance in obtaining medicaid,
15 unless ineligible; assistance in obtaining other health
16 insurance; assistance in obtaining all other public benefits to
17 which the child, as an adult, may be entitled; referral to
18 transitional housing, if available; or assistance in securing
19 other housing and assistance in obtaining employment or other
20 financial support;

21 (d) assistance in applying for admission
22 to a post-secondary institution, vocational training program or
23 other educational institution and assistance in obtaining
24 appropriate financial aid;

25 (e) assistance in maintaining

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1 relationships with individuals who are important to the child
2 if the child has been in an out-of-home placement in a group
3 home for six months or longer from the date the child entered
4 foster care, based on the child's best interests;

5 (f) assistance in arranging for a
6 guardianship or limited guardianship if the child is
7 incapacitated due to disability to the degree that the child
8 cannot adequately give or withhold informed consent for
9 treatment or other important decisions regarding the child's
10 health or safety; and

11 (g) a written transition plan and a
12 transition coordinator.

13 B. If the court finds that the department has not
14 met all the requirements of Paragraph (2) of Subsection A of
15 this section and that termination of jurisdiction could be
16 harmful to the best interests of the child, the court shall
17 continue to exercise its jurisdiction until it finds the
18 department has met all the requirements of Paragraph (2) of
19 Subsection A of this section, unless the child knowingly and
20 voluntarily informs the court that the child waives the child's
21 right to implementation of the transition living plan and
22 elects to have the case dismissed.

23 C. The children's court division of the district
24 court shall develop and adopt the standards and appropriate
25 forms necessary to implement this section."

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1 Section 3. Section 32A-4-2 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 96, as amended) is amended to read:

3 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect
4 Act:

5 A. "abandonment" includes instances when the
6 parent, without justifiable cause:

7 (1) left the child without provision for the
8 child's identification for a period of fourteen days; or

9 (2) left the child with others, including the
10 other parent or an agency, without provision for support and
11 without communication for a period of:

12 (a) three months if the child was under
13 six years of age at the commencement of the three-month period;
14 or

15 (b) six months if the child was over six
16 years of age at the commencement of the six-month period;

17 B. "abused child" means a child:

18 (1) who has suffered or who is at risk of
19 suffering serious harm because of the action or inaction of the
20 child's parent, guardian or custodian;

21 (2) who has suffered physical abuse, emotional
22 abuse or psychological abuse inflicted or caused by the child's
23 parent, guardian or custodian;

24 (3) who has suffered sexual abuse or sexual
25 exploitation inflicted by the child's parent, guardian or

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1 custodian;

2 (4) whose parent, guardian or custodian has
3 knowingly, intentionally or negligently placed the child in a
4 situation that may endanger the child's life or health; or

5 (5) whose parent, guardian or custodian has
6 knowingly or intentionally tortured, cruelly confined or
7 cruelly punished the child;

8 C. "aggravated circumstances" [~~include~~] includes
9 those circumstances in which the parent, guardian or custodian
10 has:

11 (1) attempted, conspired to cause or caused
12 great bodily harm to the child or great bodily harm or death to
13 the child's sibling;

14 (2) attempted, conspired to cause or caused
15 great bodily harm or death to another parent, guardian or
16 custodian of the child;

17 (3) attempted, conspired to subject or has
18 subjected the child to torture, chronic abuse or sexual abuse;
19 or

20 (4) had [~~his~~] parental rights over a sibling
21 of the child terminated involuntarily;

22 D. "great bodily harm" means an injury to a person
23 that creates a high probability of death, that causes serious
24 disfigurement or that results in permanent or protracted loss
25 or impairment of the function of [~~any~~] a member or organ of the

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1 body;

2 E. "neglected child" means a child:

3 (1) who has been abandoned by the child's
4 parent, guardian or custodian;

5 (2) who is without proper parental care and
6 control or subsistence, education, medical or other care or
7 control necessary for the child's well-being because of the
8 faults or habits of the child's parent, guardian or custodian
9 or the failure or refusal of the parent, guardian or custodian,
10 when able to do so, to provide them;

11 (3) who has been physically or sexually
12 abused, when the child's parent, guardian or custodian knew or
13 should have known of the abuse and failed to take reasonable
14 steps to protect the child from further harm;

15 (4) whose parent, guardian or custodian is
16 unable to discharge ~~[his]~~ that person's responsibilities to and
17 for the child because of incarceration, hospitalization or
18 physical or mental disorder or incapacity; or

19 (5) who has been placed for care or adoption
20 in violation of the law; provided that nothing in the
21 Children's Code shall be construed to imply that a child who is
22 being provided with treatment by spiritual means alone through
23 prayer, in accordance with the tenets and practices of a
24 recognized church or religious denomination, by a duly
25 accredited practitioner thereof is for that reason alone a

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1 neglected child within the meaning of the Children's Code; and
2 further provided that no child shall be denied the protection
3 afforded to all children under the Children's Code;

4 F. "physical abuse" includes [~~but is not limited~~
5 ~~to~~] any case in which the child exhibits evidence of skin
6 bruising, bleeding, malnutrition, failure to thrive, burns,
7 fracture of any bone, subdural hematoma, soft tissue swelling
8 or death and:

9 (1) there is not a justifiable explanation for
10 the condition or death;

11 (2) the explanation given for the condition is
12 at variance with the degree or nature of the condition;

13 (3) the explanation given for the death is at
14 variance with the nature of the death; or

15 (4) circumstances indicate that the condition
16 or death may not be the product of an accidental occurrence;

17 G. "sexual abuse" includes [~~but is not limited to~~]
18 criminal sexual contact, incest [~~or~~] and criminal sexual
19 penetration, as those acts are defined by state law; [~~and~~]

20 H. "sexual exploitation" includes [~~but is not~~
21 ~~limited to~~]:

22 (1) allowing, permitting or encouraging a
23 child to engage in prostitution;

24 (2) allowing, permitting, encouraging or
25 engaging a child in obscene or pornographic photographing; [~~or~~]

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1 and

2 (3) filming or depicting a child for obscene
3 or pornographic commercial purposes, as those acts are defined
4 by state law;

5 I. "transition living plan" means an individualized
6 written plan that is reasonably calculated to provide adequate
7 support and maintenance to a person, based on the unique needs
8 of the person, and that is reasonably calculated to increase
9 independent living skills that will enable the person to be
10 self-sufficient;

11 J. "transitional living services" means services
12 that help a person arrange for adult living, including gaining
13 access to food; clothing; housing; and vocational, educational,
14 medical and mental health services. "Transitional living
15 services" includes:

16 (1) identification of programs and services
17 appropriate for the person's needs;

18 (2) help in obtaining the identified programs
19 or services;

20 (3) coordination of delivery of services when
21 multiple providers or programs are involved in the provision of
22 care;

23 (4) reassessment to ensure that the services
24 obtained are necessary and appropriate in meeting the person's
25 needs; and

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1 (5) determination of whether additional
2 services are warranted; and

3 K. "transition coordinator" means a person who is
4 assigned to work with a child in custody to assess needs,
5 identify resources and connect the child with resources in
6 adult systems. The transition coordinator is responsible for
7 assisting the child in accessing transitional living services."

8 Section 4. Section 32A-4-25.1 NMSA 1978 (being Laws 1997,
9 Chapter 34, Section 8, as amended) is amended to read:

10 "32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW
11 HEARINGS.--

12 A. A permanency hearing shall be commenced within
13 six months of the initial judicial review of a child's
14 dispositional order or within twelve months of a child entering
15 foster care pursuant to Subsection E of this section, whichever
16 occurs first. Prior to the initial permanency hearing, all
17 parties to the hearing shall attend a mandatory meeting and
18 attempt to settle issues attendant to the permanency hearing
19 and develop a proposed treatment plan that serves the child's
20 best interest. Prior to the initial permanency hearing, the
21 department shall submit a progress report regarding the child
22 to the local substitute care review board for that judicial
23 district. The local substitute care review board may review
24 the child's dispositional order, any continuation of that order
25 and the department's progress report and report its findings

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1 and recommendations to the court.

2 B. At the permanency hearing, all parties shall
3 have the opportunity to present evidence and to cross-examine
4 witnesses. At the conclusion of the permanency hearing, the
5 court shall order one of the following permanency plans for the
6 child:

7 (1) reunification;

8 (2) placement for adoption after the parents'
9 rights have been relinquished or terminated or after a motion
10 has been filed to terminate parental rights;

11 (3) placement with a person who will be the
12 child's permanent guardian;

13 (4) placement in the legal custody of the
14 department with the child placed in the home of a fit and
15 willing relative; or

16 (5) placement in the legal custody of the
17 department under a planned permanent living arrangement,
18 provided that there is substantial evidence that none of the
19 above plans is appropriate for the child.

20 C. If the court adopts a permanency plan of
21 reunification, the court shall adopt a plan for transitioning
22 the child home and schedule a permanency review hearing within
23 three months. If the child is reunified, the subsequent
24 hearing may be vacated.

25 D. At the permanency review hearing, all parties

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1 and the child's guardian ad litem or attorney shall have the
2 opportunity to present evidence and cross-examine witnesses.

3 Based on the evidence, the court shall:

4 (1) change the plan from reunification to one
5 of the alternative plans provided in Subsection B of this
6 section;

7 (2) dismiss the case and return custody of the
8 child to [~~his~~] the child's parent, guardian or custodian; or

9 (3) return the child to the custody of [~~his~~]
10 the child's parent, guardian or custodian, subject to any
11 conditions or limitations as the court may prescribe, including
12 protective supervision of the child by the department and
13 continuation of the treatment plan for not more than six
14 months, after which the case shall be dismissed. The
15 department may seek removal of a child from the home by
16 obtaining an order in the pending case or by seeking emergency
17 removal under Section 32A-4-6 NMSA 1978 during the period of
18 protective supervision if the child's best interest requires
19 such action. When a child is removed in this situation, a
20 permanency hearing shall be scheduled within thirty days of the
21 child coming back into the department's legal custody.

22 E. The court shall hold a permanency hearing and
23 adopt a permanency plan for a child within twelve months of the
24 child entering foster care. For purposes of this section, a
25 child shall be considered to have entered foster care on the

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1 earlier of:

2 (1) the date of the first judicial finding
3 that the child has been abused or neglected; or

4 (2) sixty days after the date on which the
5 child was removed from the home.

6 F. The court shall hold permanency hearings every
7 twelve months when a child is in the legal custody of the
8 department.

9 G. Prior to the first permanency hearing after the
10 child turns fourteen years of age, the department shall meet
11 with the child; the child's surrogate parent, appointed
12 pursuant to the federal Individuals with Disabilities Education
13 Act, or other educational decision-maker identified by the
14 court; the child's court attorney; and staff from the child's
15 school to develop an educational next-step plan. The
16 educational plan shall be based on the individual needs of the
17 child and must be reasonably calculated to support the child's
18 identified post-secondary goals, including vocational goals.
19 The educational plan shall be reviewed at the first permanency
20 hearing after the child turns fourteen years of age. Based on
21 its review, the court may adopt the educational plan or may
22 order the department to convene another planning meeting to
23 revise the educational plan. The educational plan shall be
24 reviewed at every subsequent permanency hearing.

25 H. At the permanency hearing prior to the child's

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1 turning seventeen years of age, the court shall inform the
2 child of the child's eligibility for transitional living
3 services and for a transition living plan.

4 ~~[G.]~~ I. The children's court attorney shall give
5 notice to all parties, the child's guardian ad litem, the
6 child's CASA, a contractor administering the local substitute
7 care review board and the child's foster parent or substitute
8 care provider of the time, place and purpose of any permanency
9 hearing or permanency review hearing held pursuant to this
10 section.

11 ~~[H.]~~ J. The rules of evidence shall not apply to
12 permanency hearings. The court may admit testimony by any
13 person given notice of the permanency hearing who has
14 information about the status of the child or the status of the
15 treatment plan. All testimony shall be subject to
16 cross-examination."

17 Section 5. Section 66-5-11 NMSA 1978 (being Laws 1978,
18 Chapter 35, Section 233, as amended) is amended to read:

19 "66-5-11. APPLICATION OF MINORS.--

20 A. The application of any person under the age of
21 eighteen years for an instruction permit, provisional license
22 or driver's license shall be signed and verified by the father,
23 mother or guardian or, in the event there is no parent or
24 guardian, by another responsible adult who is willing to assume
25 the obligation imposed under this article upon a person signing

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1 the application of a minor.

2 B. The application of a minor who is in the custody
3 of the state may be signed and verified by a grandparent; a
4 sibling over the age of eighteen years; an aunt; an uncle; a
5 foster parent with whom the minor resides; or, as authorized by
6 the secretary of children, youth and families, a child
7 protective services worker or probation officer; provided that
8 the child protective services worker or probation officer first
9 notifies a foster parent or other responsible party of the
10 intent to sign.

11 [~~B-~~] C. Any negligence or willful misconduct of a
12 minor under the age of eighteen years when driving a motor
13 vehicle upon a highway shall be imputed to the person who has
14 signed the application of the minor for a permit or license,
15 which person shall be jointly and severally liable with the
16 minor for [any] damages caused by the negligence or willful
17 misconduct except as otherwise provided in [~~Subsection G~~]
18 Subsections D and E of this section.

19 D. Liability shall not be imposed under this
20 section or under the Mandatory Financial Responsibility Act on
21 the state or on a juvenile probation officer or child
22 protective services worker for damages caused solely by the
23 negligence or willful misconduct of a minor driver whose
24 application for an instruction permit, provisional license or
25 driver's license was signed by the child protective services

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1 worker or juvenile probation officer with the authorization of
2 the children, youth and families department while the minor was
3 in the custody of the state.

4 [~~G.~~] E. In the event a minor deposits or there is
5 deposited upon [~~his~~] the minor's behalf proof of financial
6 responsibility in respect to the operation of a motor vehicle
7 owned by [~~him~~] the minor or, if not the owner of a motor
8 vehicle, with respect to the operation of any motor vehicle, in
9 form and in amounts as required under the motor vehicle
10 financial responsibility laws of this state, the division may
11 accept the application of the minor when signed by one parent
12 or the guardian of the minor, and, while such proof is
13 maintained, the parent or guardian is not subject to the
14 liability imposed under Subsection [~~B~~] C of this section."

15 Section 6. APPROPRIATIONS.--

16 A. The following appropriations are made to the
17 following departments for expenditure in fiscal year 2009 for
18 the implementation of transitional services for youth:

19 (1) three million six hundred thirty thousand
20 dollars (\$3,630,000) to the children, youth and families
21 department for the following purposes:

22 (a) one million six hundred eighty
23 thousand dollars (\$1,680,000) for contracts with private
24 transitional living contractors to provide transition services
25 for youth in transition, including options for provisions of

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1 housing;

2 (b) seven hundred fifty thousand dollars
3 (\$750,000) for provision of supportive housing for youth in
4 transition;

5 (c) six hundred fifty thousand dollars
6 (\$650,000) for recruitment, training and provision of
7 specialized foster homes for older youth to support youth in
8 transition;

9 (d) four hundred thousand dollars
10 (\$400,000) to add five full-time employees as transition
11 coordinators to provide transition services for youth in
12 transition;

13 (e) one hundred thousand dollars
14 (\$100,000) for provision of a discretionary fund allotment for
15 up to one thousand dollars (\$1,000) per eligible youth as a
16 discretionary fund allotment; and

17 (f) fifty thousand dollars (\$50,000) for
18 development and implementation of a youth-designed peer mentor
19 program to be available for all youth in transition;

20 (2) to the aging and long-term services
21 department, four hundred eighty thousand dollars (\$480,000) for
22 six new full-time employees as transition coordinators to
23 provide transition services for youth with disabilities; and

24 (3) one hundred fifty thousand dollars
25 (\$150,000) to the administrative office of the courts for the

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1 court-appointed special advocate program for recruitment and
2 training of court-appointed special advocates to be adult
3 mentors for youth in transition.

4 B. Any unexpended or unencumbered balance remaining
5 at the end of fiscal year 2009 shall revert to the general
6 fund.

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